

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 DMITRI ALEXANDER,)
11 Petitioner,) 2:17-cv-01490-KJD-NJK
12 vs.)
13 JO GENTRY, *et al.*,)
14 Respondents.)
15 _____ /

16 Petitioner has submitted an application to proceed *in forma pauperis* and a petition for a writ
17 of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The court finds that petitioner is able to
18 pay the full filing fee of five dollars (\$5.00). He will be allowed thirty days to have the filing fee
19 sent to the court.

20 In addition, petitioner has submitted an entirely hand-written document styled as a petition
21 for writ of habeas corpus. ECF No. 1-1. Because he appears to be challenging his state custody
22 under a state-court judgment, he is required to complete a petition for a writ of habeas corpus
23 pursuant to 28 U.S.C. § 2254, on the court-approved form. Local Rule, LSR 2-1 (requiring plaintiffs
24 appearing in *pro se* to file all of their complaints and petitions on the court's approved forms).

Petitioner has also submitted motions for a temporary restraining order and a preliminary injunction, with which petitioner asks this court to enter an order forthwith directing respondents to

1 show cause why they should not be ordered to correct an allegedly erroneous calculation of his
2 statutory time credits. ECF Nos. 4/5. “A preliminary injunction is an extraordinary remedy never
3 awarded as of right.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). It
4 is appropriately used to preserve a party's rights pending resolution of the merits of his claim. *Big*
5 *Country Foods, Inc. v. Board of Educ. of Anchorage School Dist., Anchorage, Alaska*, 868 F.2d
6 1085, 1087 (9th Cir. 1989). The grant or denial of a motion for a preliminary injunction is a matter of
7 the district court's discretion. *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 174
8 (9th Cir. 1987). “Granting a motion for preliminary injunction is appropriate when the plaintiff
9 demonstrates either (1) probable success on the merits and the possibility of irreparable harm, or that
10 serious questions exist regarding the merits and the balance of hardships tips sharply in plaintiff's
11 favor.” *Southwest Voter Registration Education Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003)
12 (en banc). “The irreducible minimum is that the moving party demonstrate a fair chance of success
13 on the merits or questions . . . serious enough to require litigation. No chance of success at all will
14 not suffice.” *Sports Form, Inc. v. United Press Internat'l, Inc.*, 686 F.2d 750, 753 (9th Cir. 1982)
15 (internal quotation marks and citations omitted).

16 Here, petitioner has not made the required showing. As an initial matter, it appears that
17 petitioner has not pursued his claim in the state courts through to a decision on the merits by the state
18 supreme court. A state prisoner seeking habeas corpus relief first must exhaust his state court
19 remedies before presenting his constitutional claims to the federal courts. 28 U.S.C. § 2254(b). To
20 satisfy the exhaustion requirement, the claim must have been fairly presented to the state courts
21 completely through to the highest court available, in this case the state supreme court. *E.g., Peterson*
22 *v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329 F.3d 1069, 1075 (9th
23 Cir. 2003). Petitioner makes no reference to having presented his claim to the Nevada Supreme
24 Court.

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1 Moreover, it also appears as if petitioner's claim is premised primarily on state law. A
2 federal writ of habeas corpus is not available with respect to claims based solely on alleged errors in
3 the interpretation or application of state law. *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010); *Estelle v.*
4 *McGuire*, 502 U.S. 62, 67–68 (1991). Where a state arbitrarily deprives a prisoner of a state created
5 liberty interest, the prisoner may state a cognizable claim for federal habeas relief under the Due
6 Process Clause. *See, e.g., Wolf v. McDonnell*, 418 U.S. 539, 571–72 (1974) (holding that a
7 state-created right to good-time credits, which could be forfeited only for serious misbehavior,
8 constituted a liberty interest protected by the Due Process Clause). However, petitioner needs to
9 show that the state acted in an arbitrary manner, not merely that it reached the wrong result as a
10 matter of state law. *See Wolff*, 418 U.S. at 558 (“The touchstone of due process is protection of the
11 individual against arbitrary action of government.”). Petitioner falls well short of making the
12 necessary showing.

13 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (ECF
14 No. 1) is DENIED. Petitioner shall have **thirty (30) days** from the date that this order is entered to
15 have the filing fee of five dollars (\$5.00) sent to the clerk of the court. Failure to comply will result
16 in the dismissal of this action.

17 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies of a noncapital
18 Section 2254 habeas petition form, a copy of the instructions for each form, and a copy of the papers
19 that he submitted in this action.

20 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies of this order.
21 Petitioner is ordered to make the necessary arrangements to have one copy of this order attached to
22 the check paying the filing fee.

23 **IT IS FURTHER ORDERED** that petitioner's motions for a temporary restraining order
24 and a preliminary injunction (ECF Nos. 4/5) are DENIED.

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1 **IT IS FURTHER ORDERED** that the court shall reserve its decision on petitioner's motion
2 for appointment of counsel (ECF No. 3) until petitioner has paid the filing fee.

3 Dated this 21 day of June, 2017.



UNITED STATES DISTRICT JUDGE